IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1592 OF 2006

Anil R. Malusare ..... Petitioner
vs.
Vasantdada Shetkari Sahakari Bank Ltd.
And ors. . . ... Respondents

Mr. P. M. Patel for petitioner

CORAM: D. G. KARNIK **J.**

DATE:26/6/2006

P.C.:

1. This petition has been directed against the order dated 11th July 2005 passed by the Industrial Court, Mumbai, partly allowing the complaint filed by the petitioner and directing the respondent to provide work to the petitioner and pay the salary from the date of the complaint. As the petitioner was denied the relief of wages prior to the date of the complaint the petitioner has filed this petition challenging that part.
2. The respondent no.1 had also challenged the impugned order by filing writ petition no. 2300 of 2005. By the order dated 14th June 2006, this Court (Coram: D.G. Karnik J), has

dismissed the writ petition of the respondent for non – prosecution. In my view the rejection of the said writ petition would not have any effect on the merits of the present writ petition.

3. Facts of the case are that the petitioner availed of leave of 8 days from 5th November 1988. After expiry of the leave period and for nearly 3 months thereafter the petitioner did not report for duty. He sought to join duty on or about 13th February 1999 and claimed that he could not join earlier because of illness. He was directed to produce the fitness certificate from the government hospital. The petitioner also did not obtain the fitness certificate immediately but obtained it after more than 2 months on 21st April 1999. According to the petitioner he was not allowed to join duty even after he had produced the fitness certificate from the government hospital. The petitioner therefore filed a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (for short the MRTU & PULP Act) on 13th June 2001. While allowing the petition the Labour Court directed that the wages shall be paid to the petitioner from the date of the complaint and not for earlier period.

4. In my view, the discretion exercised by the Labour Court allowing wages from the date of the complaint while allowing the complaint cannot be interfered with in the facts and circumstances of the case, and especially in exercise of the writ jurisdiction for the reasons mentioned below.

5. The petitioner remained absent without sanctioned leave. After more than 3 months he reported sickness and therefore the employer was perfectly justified in asking the petitioner for getting a fitness certificate from the government hospital. The petitioner did not obtain the fitness certificate for more than two months. Even after obtaining the fitness certificate and the alleged denial by the employer to allow the petitioner to join duty the petitioner did not file the complaint under Section 28. Any complaint of unfair labour practice is required to be filed within a period of 90 days from the date of alleged unfair labour practice. The petitioner ought to have filed the complaint within a period of 90 days from the day he was not allowed to join duty. He waited for more than two years and filed the complaint only on 13th June 2001. The petitioner also did not apply for condonation of delay in filing the complaint claiming that not allowing him to join duty was a continuous unfair

labour practice. If so the complaint related only to the alleged unfair labour practice of not allowing to work for a period of 90 days prior to the date of the complaint. The complaint having been filed on 13th June 2001 the petitioner cannot complain of alleged refusal by the respondent to employ him prior to 14th March 2001, taking the period of of limitation of 90 days from the date of alleged unfair labour practice. The Industrial Court was therefore perfectly justified in rejecting the back wages prior to 14th March 2001. The Industrial Court has exercised the discretion and allowed the wages from the date of the complaint instead of 14th March 2001. Taking into consideration conduct of the petitioner in overstaying the leave and not producing the fitness certificate for more than 2 months even after being asked to do so and delay in filing of complaint it cannot be said that the Industrial Court erred in limiting the payment of wages from the date of the complaint.

6. For the above reasons the petition is dismissed summarily.

(D. G. KARNIK **J**)